

HIGH COURT OF SIKKIM : GANGTOK
Record of Proceedings

WA No. 05/2023

MR. DUK NATH NEPAL

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

For Appellant : Mr. Pratap Khati and Ms. Bandana Rai,
Advocates.

For Respondents : Mr. Zangpo Sherpa, Addl. Advocate General
No. 1 and 2 with Ms. Pema Bhutia, Asst. Govt. Advocate.

For Respondent No.3 : Ms. Rachhitta Rai, Advocate.

For Respondents : None appears.
No. 4 and 5

Date: 01/08/2023**CORAM:**

HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

...

ORDER : (per the Hon'ble, the Chief Justice)

On 08th June, 2023, this Court passed the following order:

"In our order dated 18th April, 2023, we had provided the appellant an opportunity to secure a sum of ₹ 32,00,000/- (Rupees thirty two lakhs only) by way of cash-security to the satisfaction of the Registrar of this Court, in the event he desired for an order for stay of recovery proceedings.

Today, when the matter is taken up for consideration, the Registry hands over to us an affidavit which was affirmed on 03rd June, 2023, wherefrom it appears that the appellant has deposited the said amount of ₹ 32,00,000/-(Rupees thirty two lakhs only) in the office of the Registrar General, High Court of Sikkim.

The only issue which the appellant is trying to raise before us is that the property-in-question — which the Recovery Officer is trying to recover — was never mortgaged with the Bank, in the first place. Since this was the only issue involved — as observed in our order dated 18th April, 2023 — we had proposed to give an opportunity to the respondent-Bank to make its stand clear before this Court — on the basis of record — as to whether the property-in-question was at all mortgaged by the respondent-Bank or not. However, this issue is still not clear to us and the Bank should spell out its stand clearly in this regard.

As such, we grant the respondent-Bank, a further opportunity to come up before this Court with a clear answer, only in respect of this issue, on the next date.

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In the meanwhile, there shall be a stay of recovery of proceedings being initiated by the Bank against the appellant, upon taking into consideration the deposit made by the appellant in terms of our order dated 18th April, 2023, with the Registrar General of this Court.

List this matter for further consideration on 06th July, 2023."

Today, when we take up the matter for further consideration, we have before us an affidavit by the respondent-Bank affirmed on 27th July, 2023 and filed on the same date, wherefrom it appears as follows;

"2. That the main contention of the Appellant in this Writ Appeal is that the property-in-question from which the Recovery Officer is trying to recover was never mortgaged with the Bank by the Appellant. In this regard I would like to submit as follows;

i) It is an admitted fact that the property-in-question was not mortgaged with the Bank by the Appellant. However, during the proceedings before DRT Guwahati, Respondent No. 5 had submitted through email a copy of letter dated 10.10.2017 issued by the Sub-Divisional Magistrate, East District Collectorate, Gangtok that Shri Duk Nath Nepal (Appellant) is the owner of the land covered by Plot No.396 (area .2420), 405 (area .0240), 1191 (area .1680), 1489 (area .600), 1489/1789 (area .2460), 1248/1790 (area .1840) and is registered in his name. That the said letter was issued by the District Authority in response to RTI application filed by the daughter of the Respondent No.5. Accordingly, Hon'ble Tribunal had opined that they must try to recover the dues from the actual borrower rather than from guarantor first.

ii) Pertaining to the order dated 20.02.2018 of DRT, Guwahati property of the Appellant was attached Vide order dated 24.08.2018 by the DRT Siliguri.

iii) That the Appellant was afforded with several opportunities and explained as to why his attached property should not be put up for sale, however, he failed to appear before the Tribunal despite giving sufficient time. In fact, Respondent No.3 had even offered Appellant for the settlement of loan by paying only Rs.12.50 lakhs approximately under their Sashakt Scheme, that too he did not pay heed to it. As such, Tribunal vide order dated 13.11.2019 had passed a Sale order of the attached property of the Appellant as well as the mortgaged property of the Guarantor.

iv) It is worth mentioning herein that Appellant had never challenged the attachment order before any authority of law and prayed for the set aside of attachment order 24.08.2018 nor have challenged the sale order dated 13.11.2019, which is still valid in the eyes of law, as such this appeal become infructuous"

Considering the specific assertions made on behalf of the respondent-Bank, as quoted above, we are of the view that in the facts and circumstances of the instant case, the appellant ought to approach the learned Debt Recovery Tribunal (DRT) at Siliguri, West Bengal, where the issue sought to be raised before this

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Court shall be adjudicated upon by the learned Tribunal at Siliguri, in accordance with law.

In the meanwhile, the recovery proceedings shall remain stayed and the amount of ₹ 32,00,000/- (Rupees thirty two lakhs only) deposited by the appellant in the office of the Registrar General, High Court of Sikkim, shall remain so deposited till the Tribunal at Siliguri finally disposes of the matter.

The appeal stands accordingly disposed of.

Pending application, being I. A. No.02 of 2023, also stands disposed of accordingly.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ds/ami